

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHURCH MUTUAL INSURANCE)
COMPANY,)
Petitioner,)
v.) Case No. 18-cv-4063
EBENEZER MISSIONARY BAPTIST)
CHURCH, INC.,)
Respondent,)

PETITION FOR APPOINTMENT OF AN UMPIRE

NOW COMES the Petitioner, CHURCH MUTUAL INSURANCE COMPANY (“Church Mutual”), by and through its undersigned counsel, HeplerBroom, LLC and pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 hereby submits the following petition for the judicial nomination of an umpire to preside over the pending property insurance appraisal between Petitioner, Church Mutual, and Respondent, EBENEZER MISSIONARY BAPTIST CHURCH, INC. (“Ebenezer”):

Parties & Jurisdiction

1. At all times relevant, Church Mutual was a corporation duly organized and existing under the laws of the State of Wisconsin, with its principal place of business located at 3000 Schuster Lane in Merrill, Wisconsin. (True and accurate copies of the Illinois Department of Insurance records are attached and incorporated as Ex. A)

2. At all times relevant, Ebenezer was a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 4501 S. Vincennes Avenue in Chicago, Illinois. (True and accurate copies of the Illinois Secretary of State records are attached and incorporated as Ex. B)

3. By virtue of its incorporation and principal place of business being in Wisconsin, Petitioner is a citizen of the State of Wisconsin. By virtue of its incorporation and principal place of business being in Illinois, Respondent is a citizen of the State of Illinois. In the underlying insurance claim, and appraisal at issue, the Respondent seeks at least \$100,000 in policy benefits, exclusive of interest and costs, and therefore, complete diversity exists between the parties pursuant to 28 U.S.C. § 1332(a)(1). (See, Exs. A and B; *see also* Affidavit of Appraiser Zwolfer, attached and incorporated as Ex. C, ¶6)

Insurance Claim & Appraisal Demand

4. On or about November 16, 2017, Ebenezer reported a property insurance claim for hail damage to Church Mutual under Policy No. 0210153-02-971796 (“Policy”), initiating Claim No. 1334212 (“Claim”). (See, Loss Acknowledgement, attached and incorporated as Ex. D)

5. Following a joint inspection and coverage investigation and pursuant to the terms and conditions of the Policy, Church Mutual accepted coverage for scattered hail damage to Ebenezer’s roof and HVAC fins, denied coverage for the claimed interior water damage and issued an undisputed actual cash value payment, less the Policy’s deductible, for \$18,340.03 on January 3, 2018. (See, Coverage Decision & Payment Letter, attached and incorporated as Ex. E)

6. On March 29, 2018, Ebenezer submitted a written demand for appraisal of the “amount of loss” of its Claim, as provided for in the Policy and nominated Mr. Ted Olszowy as its appraiser (“Appraiser Olszowy”). (See, Demand for Appraisal, attached and incorporated as Ex. F)

7. On May 2, 2018, Church Mutual accepted in part and rejected in part Ebenezer’s demand for appraisal of the Claim and nominated Steven Zwolfer, AIC as its appraiser (“Appraiser Zwolfer”). (See, Response to Appraisal Demand, attached and incorporated as Ex. G)

Policy Language & Umpire Impasse

8. At all times relevant, the operative appraisal language of the Policy provided as follows:

PROPERTY CONDITIONS

This Property Coverage Part is subject to the Common Policy Conditions, any other conditions in any Property Coverage Forms, and the following conditions.

* * * * *

C. LOSS CONDITIONS

* * * * *

2. Appraisal.

If we and you disagree on the value of the property or the amount of loss, either way make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim. (See, Certified Copy of the Policy, pg. 47, attached and incorporated as Ex. H)

9. On May 8, 2018, Appraiser Zwolfer contacted his counterpart, Appraiser Olszowy, in order to schedule the joint appraisal inspection and attempt to agree on an umpire per the terms of the Policy. (Ex. C, ¶3)

10. The appraisers were able to schedule the joint inspection for May 30, 2018, but unable to agree on an umpire in advance of the same. (Ex. C, ¶4)

11. At the May 30, 2018 joint inspection, the appraisers were again unable to agree on an umpire, and Appraiser Olszowy advised Appraiser Zwolfer that Ebenezer would be requesting that a Court appoint the umpire. (Ex. C, ¶5)

12. After multiple attempts, the appraisers are unable to agree on an umpire, and Church Mutual and its appraiser respectfully request that the “selection be made by a judge of a court having jurisdiction.” (Ex. H, pg. 47)

13. Petitioner tenders and submits four (4) potential umpire candidates and requests that the Court select one of the following:

1. David Balistreri
Building Envelope Consultants, Ltd.
PO Box 1307
Waukesha, WI 53187
(262) 549-1949
2. Nick Gorgen
Roofing Consultants, Ltd.
PO Box 1305
Waukesha, WI 53187
(800) 549-0802
3. Joseph Royster
Litchfield Cavo
303 W. Madison Street, #300
Chicago, IL 60606
(312) 781-6608
4. Thomas Smith, AIA
TL Smith Consulting, Inc.
16681 Boswell Road
Rockton, IL 61072
(877) 629-9752

WHEREFORE, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, Petitioner, CHURCH MUTUAL INSURANCE COMPANY, respectfully requests and petitions this Court to appoint one of the above-identified neutrals to serve as the umpire over the appraisal demanded by

Respondent, EBENEZER MISSIONARY BAPTIST CHURCH, INC. and for any and all other relief that this Court deems necessary and just.

Respectfully submitted,

CHURCH MUTUAL INSURANCE
COMPANY,

By: /s/ James P. DuChateau, Esq.
One of its Attorneys

Rick Hammond, Esq.
James P. DuChateau, Esq.
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COUNSEL FOR CHURCH MUTUAL

CERTIFICATE OF SERVICE

I, James P. DuChateau, hereby certify that on June 12, 2018 a true and correct copy of ***Church Mutual Insurance Co.'s Petition for Appointment of an Umpire*** was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the all counsel of record who have heretofore appeared in this matter.

/s/ James P. DuChateau

CERTIFICATE OF ADDITIONAL SERVICE

Pursuant to 28 U.S.C. § 1746, the, undersigned attorney certifies that on June 12, 2018, a true and correct copy of ***Church Mutual Insurance Co.'s Petition for Appointment of an Umpire*** was electronically filed with the Clerk of Court using the CM/ECF system and was mailed, via first-class mail, postage prepaid, to the individuals and entities set forth below:

RESPONDENT, INSURED

Ebenezer Missionary Baptist Church
c/o Paulette Toliver
4501 S. Vincennes Avenue
Chicago, IL 60653

PUBLIC ADJUSTER FOR RESPONDENT, EBENEZER MBC

Lachman Public Adjuster, Inc.
5250 Old Orchard Road, Suite 300
Skokie, IL 60077
Email: PALACHMAN100@gmail.com

APPRAISER FOR RESPONDENT, EBENEZER MBC

Mr. Ted Olszowy
3247 N. Natchez Avenue
Chicago, IL 60634

APPRAISER FOR PETITIONER, CHURCH MUTUAL

Steve Zwolfer, AIC
Illinois Claim Service, Ltd.
115 Commerce Dr., Ste. B
Grayslake, Illinois 60030
szwolfer@illinoisclaimservice.com

/s/ James P. DuChateau